M represents a hydrogen atom, or a [free or complexed] metal atom selected from the group consisting of Na, Li, K, Zn and Cu,
to produce a compound of formula I.--

Add new claim 9:

--9 (New). The compound ~~of formula I~~ which is 5-chloro-6-(4-nitrophenyl)-7-(2,2,2-trifluoroethylamino)-[1,2,4]triazolo[1,5-a]-pyrimidine.--

Cancel claim 5.

Remarks

Claims 1-8 are in the application and have been rejected. Claims 1 and 6 have been amended, claim 5 has been canceled and new claim 9 has been added by the amendments above. Applicants respectfully request reconsideration of this application in light of the amendments and remarks set forth herein.

Claims 1-4 and 6-8 have been rejected pursuant to 35 U.S.C. § 112, second paragraph, as being indefinite with regard to the definition of the optional substituents in claim 1 and the definition of M in claim 6. Applicants have amended claims 1 and 6 above to more clearly define the subject matter claimed; Applicants believe that these amendments overcome the rejection under § 112, second paragraph. Consequently, withdrawal of this rejection is hereby respectfully solicited.

Claims 1-4 and 6-8 have been rejected under 35 U.S.C. § 112, first paragraph as containing subject matter not described in the specification in an enabling manner. This refers again to the scope of the term "optionally substituted" in claim 1. As mentioned above, claim 1 has been amended to more clearly set forth the subject matter claimed, and this amendment is believed to overcome the instant rejection. Consequently, withdrawal of this rejection is respectfully solicited.

Claims 1-8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Pees et al. (5,593,996). The reference is cited as generically disclosing several 5-halo-7-amino-6-aryl-1,2,4-triazolopyrimidines. The Examiner has noted that the reference compounds differ from the claimed compounds in that the amino substituents in the reference compounds do not have to include the presently claimed fluorinated ethyl or isopropyl groups, although such groups are generically described. The Examiner also states that the presently claimed route to make the compounds is described in the reference. Applicants traverse this rejection for the following reasons.

The Applicants have discovered that the claimed compounds having a fluorinated ethyl or propyl group attached to the amino nitrogen are significantly more systemic in target plant species than are compounds of the cited reference in which such an amino substituent does not exist. This reference does not teach or suggest that the presently claimed compounds have superior systemicity, and nothing in the cited reference would suggest or lead one skilled in the art to prefer or select the presently claimed compounds over other compounds.

In view of the foregoing, Applicants request withdrawal of this rejection.

Claims 1-8 have been rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-7 of U.S.P.N. 5,948,783 in view of Pees (U.S.P.N. 5,593,996 or EP '113). Applicants traverse this rejection for the following reasons.

The claims of U.S.P.N. 5,948,783 do not cover the presently claimed compounds which must include a nitro or alkoxy phenyl substituent, nor do they suggest such a compound. The Examiner, therefore, has looked to Pees '996 to find mention of such substituents.

Pees '996 is an earlier patent than the '783 patent, and is much broader in scope. In fact, the '783 patent claims a subgenus of the broader genus of Pees '996. The breadth of the teachings in Pees '996 is such that there is nothing to motivate one skilled in the art to select nitro- or alkoxy-phenyl substituents, nor to select such substituents for use in modifying the claimed invention of the '783 patent. The Examiner is impermissibly using the present invention disclosure as a road map to pick and choose the parts of Pees '996 which will convert the '783 invention into the present invention; however, nothing in Pees '996 provides guidance to do so.

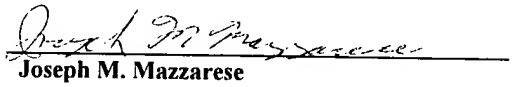
For the reasons set forth above, Applicants believe that the present invention is not obvious from the cited references, and urges withdrawal of the obviousness-type double patenting rejection.

Claims 1-8 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Pfrengle (5,981,534). As amended above, the claimed invention does not include the compounds disclosed in this reference. In the reference compounds the 6-position of the triazolopyrimidine must be substituted with a 4-alkoxyphenyl group which group is unsubstituted in the 3 and 5 positions; the present claims do not cover such compounds.

Withdrawal of this rejection under § 102(e) is respectfully requested.

The Examiner has stated that the Declaration is defective in that the PCT application claimed for priority (PCT/US98/05615) is identified as a foreign application under § 119 instead of as a US priority application under § 120. The Applicants respectfully disagree. It is understandable that the Examiner assumes that a PCT application filed in the US receiving office is an application for both US and foreign patents; however, in this case the PCT application did not designate the US, but only designated foreign countries. Therefore, it cannot be considered a US application. For this reason, it is claimed under § 119 as a foreign priority application. Therefore, Applicants believe that the Declaration is accurate and does not need to be replaced, and respectfully request withdrawal of this requirement.

Applicants believe that the above amendments and arguments overcome all the grounds for rejection, and respectfully urge the allowance of all of claims 1-4 and 6-9 and advancement of the application to issue art an early date. Any unpaid fees associated herewith may be charged to Deposit Acct. No. 01-1300.



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